

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KATIE J. BARNARD, individually
and on behalf of N.B. and M.S., minor
children,

Plaintiff,

v.

MINDY WATSON, in her individual
and official capacities, et al.,

Defendants.

NO: 2:14-CV-0024-TOR

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

BEFORE THE COURT is Defendants' Motion to Dismiss (ECF No. 2).
This matter was submitted for consideration without oral argument. The Court has
reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

Plaintiff Katie Bernard ("Plaintiff") has sued six caseworkers employed by
the Child Welfare Services division of the Washington State Department of Social
and Health Services ("DSHS") for various causes of action arising from the

1 placement of her minor children, N.B. and M.S., in foster care. Defendants move
2 to dismiss the complaint for failure to effectuate proper service and for failure to
3 file a notice of tort claim form with the Office of Risk Management as required by
4 RCW 4.92.100.

5 DISCUSSION

6 **A. Service of Process**

7 Defendants move to dismiss the complaint due to improper service of
8 process.¹ In opposing the motion, Plaintiff indicates that she mailed a copy of the
9 summons and complaint to each Defendant via certified mail, and that an unnamed
10 DSHS employee signed for the letters. ECF No. 11 at 2. As Defendants correctly
11 note, this does not constitute proper service. Pursuant to RCW 4.28.080(15), a
12 plaintiff must accomplish service by delivering a copy of the summons “to the
13 defendant personally, or by leaving a copy of the summons at the house of his or
14 her usual abode with some person of suitable age and discretion then resident
15 therein.” The phrase “to the defendant personally” means that the summons must

16 ¹ Defendants did not waive this challenge by removing the case to this Court.
17 *Wabash W. Ry. v. Brow*, 164 U.S. 271, 279 (1896) (holding that the removal of a
18 case from state court to federal court constitutes a special appearance and does not
19 waive the defendant’s right to contest service of process).
20

1 be hand-delivered to the defendant. *Weiss v. Glemp*, 127 Wash.2d 726, 731
2 (1995). Service must be made “by the sheriff of the county wherein the service is
3 made, or by his deputy, or by any person over 18 years of age who is competent to
4 be a witness in the action, other than a party.” Wash. Sup. Ct. Civ. R. 4(c); *accord*
5 Fed. R. Civ. P. 4(c) (permitting service by “[a]ny person who is at least 18 years
6 old and not a party” to the action).

7 Although RCW 4.28.080(16) provides for substitute service by mail, this
8 method of service is only permissible “where the [defendant] cannot with
9 reasonable diligence be served” personally. RCW 4.28.080(16); *see also Pascua v.*
10 *Heil*, 126 Wash. App. 520, 526 (2005) (“Substitute service by mail . . . is
11 permissible when the plaintiff sets forth the following facts: (1) that the defendant
12 could not be found in Washington after a diligent search, (2) that the defendant was
13 a resident of Washington, and (3) that the defendant had either left the state or
14 concealed himself within it, with intent to defraud creditors or avoid service of
15 process.”). Since Plaintiff has neither effectuated proper personal service nor
16 satisfied the prerequisites for substitute service by mail, the case must be dismissed
17 without prejudice.

18 To the extent that Plaintiff wishes to pursue claims against DSHS, she must
19 serve a copy of the summons and complaint on the Attorney General “or by
20

1 leaving the summons and complaint in the office of the attorney general with an
2 assistant attorney general.” RCW 4.92.020.

3 **B. Notice of Claim Statute**

4 In view of the foregoing ruling, the Court need not address whether Plaintiff
5 properly complied with RCW 4.92.100, the notice of claims statute.


6 **IT IS HEREBY ORDERED:**

7 Defendants’ Motion to Dismiss (ECF No. 2) is **GRANTED**. Plaintiff’s
8 Complaint is hereby **DISMISSED** without prejudice.

9 The District Court Executive is hereby directed to enter this Order, provide
10 copies to counsel and Plaintiff at her address of record, enter **JUDGMENT** for
11 Defendants, and **CLOSE** the file.

12 **DATED** June 9, 2014.




THOMAS O. RICE
United States District Judge